

III. Claims 36-38, drawn to a method for enhancing the octane number of a petroleum or petroleum-derived fuel by combining the biomass derived blending component with a petroleum or petroleum-derived fuel.

Upon review, the restriction does not appear to be proper since specific provisions are set forth in the Patent and Trademark Regulations which allow at minimum, a product, a process of making that product, and a process or method of using the product to be present in a single application.

More particularly, 37 CFR 1.141(b) provides that:

Where claims to all three categories, product, process of making, and process of use, are included in a national application, a three way requirement for restriction can only be made where the process of making is distinct from the product. If the process of making and the product are not distinct, the process of using may be joined to the claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product can be made.

(Emphasis added)

Accordingly, it appears clearly improper to separate the product (i.e., claims 33-35, from the process of preparing the product (Claims 1-32 and 39-50) and from the method of using the product (claims 36-38) as has been done in the Restriction Requirement. In this regard, please note that the blending component product use as claimed, namely enhancing the octane number of a petroleum-derived fuel and the “especially adapted” process for preparing the blended component cannot be used with a materially different product.

Whether one is discussing the biomass-derived blending component itself, the process of making or obtaining the blending component, or the method of using the blending component to

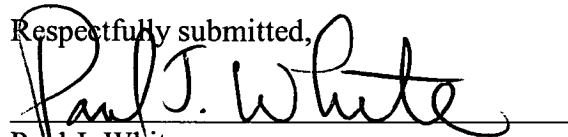
enhance the octane number of a petroleum-derived fuel, the fact of the matter is this is a single inventive concept that runs throughout all of the claims under consideration. Since the process of making the blending component and the blending component product are clearly not distinct, the process of using the blending component may be joined with the claims directed to the product and the process of making the blending component – even if a showing of distinctness between the product and process of using the product can be made (37 CFR 1.141(b)).

Further still, the Manual of Patent Examination Procedures itself recognizes the desirability of considering the relative burdens on applicant of a Restriction Requirement in Section 803 where it provides:

If the search and examination of an entire application
can be made without serious burden, the Examiner is
encouraged to examine it on the merits, even if it includes
claims to distinct or independent inventions. (Emphasis added)

Given the close relationship among the present claims and in view of the fact that the resulting search would not create an undue burden on the Patent Office or the Examiner, it is urged that the Restriction is improper and that the Restriction Requirement should be withdrawn.

Respectfully submitted,



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